

# **EXHIBIT B**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
-----X

UNITED STATES OF AMERICA,  
  
Plaintiff,

v.

41-1395(WCC)

AMERICAN SOCIETY OF COMPOSERS,  
AUTHORS AND PUBLISHERS, et al.  
  
Defendants.  
-----X

White Plains, N.Y.  
December 8, 2008  
10:00 a.m.

Before:

THE HONORABLE WILLIAM C. CONNER,  
  
District Judge

APPEARANCES

WHITE & CASE  
Attorneys for Defendant ASCAP  
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2

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THE COURT: Good morning.  
I have read and considered your very voluminous  
submissions on the proposed judgments.  
I think you've made every argument that you're likely  
to make for and against the several proposed judgments. And I  
think the most expeditious way to proceed would be to announce  
at the outset my tentative decision on all of the disputed  
issues and then give you a chance to tell me why I ought not to  
make a grievous mistake. Or if you simply can't suppress a cry  
Page 1

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 25 music use adjustment factor for SuperPass should be computed on  
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 1 a monthly rather than an annual basis. According to my  
 2 computation, which I hope you will check, the music use  
 3 adjustment factor for 2006 computed on a monthly basis, is  
 4 percent. Applying that factor to 2004 and 2005 revenues  
 5 would result in SuperPass fees for 2004 of and for  
 6 2005 fees of . But, of course, you should check my  
 7 calculations.

8 Now, there is one other important open issue, and  
 9 that's the supersedeas bond.

10 At the hearing on July 1st, I indicated that I  
 11 believed it was unnecessary to require the posting of a bond to  
 12 stay execution of a judgment pending appeal, because there  
 13 appeared to be only a negligible risk that any of the  
 14 applicants would be unable to pay the judgment. Of course,  
 15 since that time, there has been an unforeseeable and  
 16 precipitous drop in the economy. And I therefore now believe  
 17 there is no justification for excusing the customary  
 18 requirement of a supersedeas bond in the amount of the  
 19 judgment.

20 One final issue is that of auditing.

21 Yahoo, in their proposed final judgment, has included  
 22 provisions for auditing that I think are unnecessary, onerous  
 23 and perhaps unfair. I see nothing wrong with the auditing  
 24 provisions contained in ASCAP's proposed judgment, and I would  
 25 be inclined to adopt those, unless somebody can persuade me

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 1 otherwise.

2 Now, what I would suggest, after I've heard your  
 3 screams of anguish, is that ASCAP revise their proposed final  
 4 judgment to incorporate fees based upon the rulings that I've  
 5 made, and that they do that within one week and they submit a  
 6 copy of it to the applicants. And they will have one week to  
 7 tell me -- not to re-argue any of the points of law, as  
 8 argument is going to be closed at the end of business today --  
 9 merely to tell me whether ASCAP has failed to follow the  
 10 rulings, or has been guilty of mathematical errors. And then  
 11 ASCAP will have a day or two in which to respond.

12 I should have everything by the time I get back, which  
 13 is January the 5th. And I will sign the judgment on that day,  
 14 and your time for appeal will start running, if anybody is  
 15 still disposed to appeal.

16 All right. The floor is open.

17 MR. STEINTHAL: Judge, before we get into screams of  
 18 anguish or whatever other reactions, there was one issue with  
 19 RealNetworks and ASCAP that your Honor's tentative rulings did  
 20 not address, which is the category of revenues that ASCAP  
 21 continued to put into top line revenue relating to music  
 22 download sales and hardware and software sales, which is not in  
 23 the revenue base that we had proposed.

24 THE COURT: They should not be included. I think  
 25 you're right. I think I didn't comment on those, but I had

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